

# Bureau for Private Postsecondary and Vocational Education

## Update

### ***The Status of the New Bureau***

DCA assumed control of the Bureau effective January 1, 1998. During the latter part of December 1997, DCA worked steadily with Council staff to provide extensions of temporary approvals and to issue initial or additional extensions for re-approvals.

In early January, we discovered that some of the certificates issued to degree-granting institutions to extend re-approvals were erroneous. We are in the process of correcting these documents and they should be corrected by mid-February.

In addition, the first week of January, we found approximately 200 applications for new approval and re-approval that had not been assigned for review. This workload has added to the already large backlog of site visits.

New senior management staff was hired at the Bureau in January, and several other staff commitments have been made.

Over the last month, the new senior management staff has begun to:

- identify additional backlogs;
- educate themselves on the old and new law;
- review and analyze old council processes and procedures to begin the design of new streamlined processes and procedures;
- recruit, interview and hire new staff;

- identify issues that must be addressed immediately because they adversely impact the schools or students.

Be sure to read more about these activities in other articles in this newsletter.

### ***The Status of Approvals, Re-approvals and Site Visits***

As previously mentioned, the Bureau is continuing to work through the backlog of new applications and applications for re-approval. The Bureau will continue to review new applications submitted prior to December 31, 1997 and after January 1, 1998, to determine whether temporary approvals to operate should be issued for new institutions. These temporary approvals will be issued until December 31, 1998, or until the Bureau takes action, whichever comes first.

Applications for re-approval submitted prior to December 31, 1997 and after January 1, 1998, will continue to be extended until December 31, 1999, or until the Bureau takes action, unless the institution has a conditional approval. Institutions that have a conditional approval will be extended until December 31, 1998, or until the Bureau takes action.

If you have an application pending and have not heard from the Bureau by the end of February, you should contact the Bureau so we can work with you to resolve your specific problem.

As soon as site review procedures and standards are developed, new staff

and existing staff are trained on these standards, and institutions are notified of the new site review standards, site reviews will begin. However, if complaints or issues come to the Bureau's attention, an unannounced compliance review and/or a site visit may be conducted.

### ***New Senior Management Staff***

Dr. Kenneth Miller left the Council on December 31, 1997, along with the Chief Administrative Officer, Jim Johnson. In addition, Dr. Betty Sundberg and George Blue, senior management at the former Council decided to retire at the end of December. As most of you may know Dr. Sundberg provided oversight of the degree-granting institutions, and Mr. Blue administered the Title 38 programs.

However, new senior management staff have been hired and although their learning curve is steep, they have managed to assimilate a great deal of knowledge of the processes and procedures, the new law, and the issues and problems at the Bureau. This new management team was made aware of the significant backlogs, as well as the history of the former Council and the new Bureau, and they look forward to the challenges we face over the next year.

As yet, the Governor has not appointed a new Bureau Chief. However, we expect this appointment within the next several weeks.

The new senior management team at the Bureau is:

- Cindy Thompson, Chief Operations and Administrative Officer;
- Nancy Stockman, Team Coordinator, Degree-Granting Institutions;

- Olivia Cortez, Team Coordinator, Non-degree-Granting Programs, subject to Article 7;
- Patty Wohl, Team Coordinator, Non-degree Granting Programs, not subject to Article 7;
- Kathy Calonder, Team Leader, Registered Programs;
- Bill Young, Team Coordinator, Title 38 programs;
- Terry Zanchi, Team Leader, STRF Claims and Closed School Unit.

### 1998 Fee Schedule

Attached to this newsletter is the [1998 Fee Schedule](#). These fees were adopted through the promulgation of emergency regulations and are effective January 8, 1998.

The Bureau is required to hold a public hearing, prior to the adoption of this new fee schedule as permanent regulations. This hearing is scheduled for Wednesday, March 25, 1998, at 1:30 p.m. at the Department of Consumer Affairs, First Floor Hearing Room, 400 R Street, Suite 1030, Sacramento, California. The official notice of this hearing is attached to this newsletter. Written comments regarding these regulations must be received no later than 1:30 p.m., on March 25, 1998.

### Annual Reports

The former Council did not mail the required annual reports for the 1997 calendar year. This was due to the lack of staff and the pending backlogs at the Council.

At the present time, the Bureau is developing a new format for the annual report to be submitted in the 1998 calendar year. However, the annual report requirements cannot be implemented until the Bureau adopts regulations that amend the annual report processes to reflect the Bureau's changes to the annual report requirements.

For example, the Bureau is considering consolidating the annual report, annual fee, and annual financial reporting requirements. The filing of these documents and fees would be required within six months of the

close of the fiscal year for each institution. We believe that this would ease the financial burden on institutions and stagger the Bureau's workload over the calendar year. We also are considering allowing institutions to designate whether they wish to report their completion and placement rates by fiscal year or academic year when filing this annual reporting data, so long as they disclose the reporting method they have chosen to students as well as the Bureau. We are interested in knowing your thoughts, and welcome your comments on this idea.

In addition, once the regulations are adopted, an electronic annual report will be placed on the Bureau's Web site at [www.dca.ca.gov/bppve](http://www.dca.ca.gov/bppve). Institutions will be required to file the annual report electronically through the use of this Web-based application. No special software will be required. However, access to the Internet will be needed. Small institutions can access the Internet through computers available at most local libraries.

### Status of Advisory Committees

Although we have received several applications for the advisory committees, it is unlikely that appointments to these committees will be made until the Governor appoints the new Bureau Chief. However, small informal working committees may be established to assist the senior management staff in carrying out their work.

For example, the Bureau wishes to adopt emergency regulations to implement the registered institution provisions (Article 9.5) and the streamlined application process contained in Articles 8 and 9. Because we want to ensure that there is no adverse impact on institutions and students, we plan to form small informal working committees to assist us in developing these regulations. We plan to release a draft of these emergency regulations with the next newsletter so we may receive your written comments before we adopt them as emergency regulations.

**Q: We mailed our annual fees to the Council, our check was cashed, but we have not received a receipt**

**yet. Will we be sent a receipt for these fees as was done in the past?**

**A:** Currently, there is a two to three week backlog in mailing out receipts for annual fees. Therefore, if you mailed your annual fees in December, you should have received your receipt by this time. If you have not received your receipt, please contact the Bureau so we may verify that your annual fees have been paid and assure that your receipt is forwarded for your records.

**Q: We have not received our annual fee billing for January 1998 or our STRF assessment for the last quarter of 1997. When will we receive these invoices?**

**A:** The Bureau is in the process of completing the STRF assessment invoices for the last quarter of 1997. The STRF assessment is late because of backlogs and workload in the last quarter of 1997. However, the Bureau has compared the STRF collections from the third quarter of 1996 to the third quarter of 1997, and determined that approximately 35% of the STRF fees due have not been paid. Although there may have been some confusion about whether fees should be paid to the Council after July 1, 1997, there should no longer be any confusion about the continuation of the regulation of private postsecondary and vocational educational institutions. If you have not paid your quarterly STRF assessments, they should be submitted to the Bureau immediately. Failure to do so may force the Bureau to take adverse action against your institution.

The annual fees for January and February 1998 also will be invoiced late. The January and February 1998 annual fee invoices cannot be mailed until the Bureau's database has been reprogrammed to reflect the new fee schedule adopted effective January 8, 1998.

**Q: If an institution has in its file an audit reflecting the institution's completion and placement rates, may the institution advertise those completion and placement rates, even though the institution did not file an annual report**

**in 1997 because the Council did not require institutions to do so? How will the Bureau validate an institution's audited completion and placement rates?**

**A:** Any institution that offers an educational program designed to prepare students for a particular vocation, trade, or career field must include in its annual report the completion and placement rates for that program, and it must maintain adequate records from which its completion and placement rates can be determined. (See Sections 94808(a)(4) and (c), 94816(a), and 94861(a)(1) and (2))

An institution that offers one or more programs, subject to the [Maxine Waters Student Protection Act \(Waters Act\)](#) must maintain records that document its completion and placement rates in accordance with the standards set by the statute, and the records must include all facts needed to substantiate the information. (Sections 94816(a), 94859) Based on a review of the information in an institution's annual report, the Bureau may require evidence of compliance with the standards for calculating completion and placement rates in a form satisfactory to the Bureau. (Section 94861(c))

Any other institution that offers one or more educational programs designed to prepare students for a particular vocation, trade, or career field also must include program completion rates and placement data in its annual report, and these must be calculated in accordance with the same standards. (Section 94808(c)) Based on a review of the information in the institution's annual report, the Bureau may initiate a compliance review, and, where appropriate, place the institution on probation. (Section 94808(c).)

During its final year, the Council did not require institutions to file annual reports. Hence, neither it nor the Bureau may have the required data documenting completion and placement rates. Nonetheless, the Bureau believes that it is not im-

proper for an institution to advertise completion or placement rates, provided that the advertised information is both truthful and sufficiently documented so that it can be substantiated.

From this point forward, all institutions will be required to file an annual report as required by Sections 94808 and 94861. During the 1997-1998 academic year only, the Bureau will interpret the cited statutes as follows:

- If an institution's records include an audit or other adequate validation of the completion and placement rates, the institution may use those completion and placement rates in its advertisements, recruiting, and program materials, provided that the audit or other validation complies with all statutory and regulatory requirements, including those prohibiting false or misleading advertising. (See, e.g., Section 94832, and [Business and Professions Code Sections 17500 and 17508](#))
- Until the Bureau promulgates further regulations identifying the standards and criteria governing the statistical information that will be required, the audit requirements contained in Section 94870(g), which apply to schools seeking to be subject to reduced refund requirements, may be used.
- The audit or other validation information must be available at all times for review and audit by the Bureau, both as part of a regular site visit and as part of any regular inspection. (See Sections 94774.5(b), 94835, 94836, 94861(c), 94874, 94915(c) and 94932(b)(2))
- The Bureau may exercise its authority under Section 17508 of the [Business and Professions Code](#) to require substantiation of these or any other advertising claims that purport to be based on facts or on factual or objective evidence.

We understand that the Council may not have enforced compliance with the cited statutes with respect to degree-granting institutions offering Associate of Occupational Studies or Associate of Applied Science degrees, which are technically subject to those sections. The Bureau has not yet determined what enforcement policy it will adopt

regarding institutions offering those programs. The scope of the applicability of the cited sections to those institutions will be addressed in a later newsletter or by regulation.

**Q:** Will the Bureau be interpreting Section 94790(h) to include as exempt from the Waters Act other third party payors, such as workers' compensation, vocational rehabilitation, the Job Training Partnership Act (JTPA), and the Private Industry Council Act (PIC)?

**A:** The language in Section 94790(h) is very specific. Its exemption from the Waters Act is limited to "educational services ... entirely and exclusively offered pursuant to a contract between the institution and a community college, a high school, or an employer...." The statute also provides that the community college, high school, or employer, and not the student, must pay for the services; students may not be required to bear any of the cost. The statute also provides that the exemption applies only if all of the enrolled students are subject to these rules.

The language in Section 94790(h) does not reflect an intention that the exemption be applied to educational services funded by other types of third party payors. Nor does it give the Bureau the authority to promulgate regulations that would include within the exemption, services funded by other types of third party payors.

For all of those reasons, the Bureau does not interpret Section 94790(4)(h) to exempt from the Waters Act educational services funded by workers' compensation, vocational rehabilitation, JTPA, or PIC.

**Q:** Under existing law, both the [Department of Real Estate](#) and the [Office of Real Estate Appraisers](#), require license applicants to complete certain courses in order to qualify for their respective licenses. They also have course requirements for licensees who wish to retain their license. Our school offers both the required pre-license courses, as well as the "continuing education" courses. Does the definition of continuing education in Section 94722 include "subjects prospective li-

**censees are required to take as a condition of licensure” as well as those required “as a condition of continued licensure”? Also, if the programs offered by my institution are approved by a government agency are they exempt from registration in accordance with Section 94739 (b)(5)?**

**A:** First, courses that are provided to students that are a condition of initial licensure are not exempt from the requirements for degree-granting and non-degree granting programs (Articles 6, 7, 8 & 9, whichever apply to the type of pre-licensure programs offered).

The answer to the second question is more complex. Section 94739 (b)(5) provides an exemption for certain types of continuing education programs as defined in Section 94722, and, at first blush it appears that the continuing education program you describe would fall within that exemption. Section 94931 (c)(5) in Article 9.5 (Registered Institutions) appears to provide the same exemption.

However, Section 94734 (b) appears to include within the meaning of “license and exam preparation” certain types of continuing education courses. Unfortunately, the statutes are silent as to the distinction between “continuing education” included within Section 94734 and “continuing education” provided pursuant to Section 94722 (a)(1).

Section 94731 (c)(4), combined with the definition of “license and exam preparation” in Section 94734 (b) appears to require registration for the program you describe. As we have previously observed in reviewing the new Act, it appears that there may be a conflict between the sections cited above. Therefore, we will need time to research the legislative intent, discuss the intent of the parties involved in the negotiations of changes to the new Act, and adopt regulations to clarify either the registration requirement or the exemption. Until this conflict can be clari-

fied, we cannot give you a definitive answer.